

PLANNING COMMISSION  
MINUTES

The Winchester Planning Commission held its regular meeting on Tuesday, December 18, 2012 at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

**CALL TO ORDER:** Chairman Shore called the meeting to order at 3:00 pm.

**PRESENT:** Chairman Dave Shore, Vice-Chairman William Wiley, and Commissioners Jennifer Beatley, Carroll “Beau” Correll, Jr., Kevin McKannan, Stephen Slaughter, and John David Smith. (7)

**ABSENT:** None

**EX-OFFICIO:** Councilor John Tagnesi and City Manager Dale Iman

**FREDERICK CO LIAISON:** Commissioner Kevin Kenney

**STAFF:** Planning Director Tim Youmans, Planner Will Moore, and Zoning & Inspections Director Aaron Grisdale

**VISITORS:** Ben Pelletier, Charles Robinson, Tom Godwin, Emad Khezam, Nadine Assou, Russell Kitzmiller, Jamie Strawderman.

**CORRESPONDENCE**

None.

**CITIZEN COMMENTS**

None.

**REPORT OF FREDERICK COUNTY PLANNING COMMISSION LIAISON**

Commissioner Kenney reported that the Commission last met on December 5. Items considered included a rezoning of Eastgate commercial property, the Master Development Plan for the next section of Snowden Bridge, discussion of the Capital Improvement Program, and review of four Ordinance amendments.

**PUBLIC HEARINGS**

- A. **CU-12-554** Request of Paul Whitley on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with additional antennas at 333 West Cork Street (*Map Number 192-01-C-16*) zoned Health Services (HS) District.

Mr. Youmans reviewed the request to remove the 3 previously approved PCS panel wall-mounted antennas on the penthouse atop the health services building at 333 West Cork Street and replace them with 9 new antennas. The locations of the Shentel antennas are noted in the letter dated October 15, 2012, with revisions dated December 10, 2012, from Paul Whitley and depicted on the building elevations and photographs submitted with the application and letter.

**Chairman Shore opened the public hearing**

Ben Pelletier, representative of the applicant, stated that he was available for any questions.

Charles Robinson of 315 South Stewart Street stated that he does not have any opposition to the additional antennas in particular, however he opposes any new special permits for the hospital until they address their parking violations.

Chairman Shore stated that that is a different issue.

Mr. Robinson stated that they have a special permit for the hospital and they are in violation of the conditions. As long as they are in violation, they should not be allowed any additional special permits.

**Chairman Shore closed the public hearing.**

There was discussion regarding the suggested bonding requirement. Mr. Youmans stated that there is an existing bond for this site and that it should be sufficient to cover the additional equipment.

*Commissioner Slaughter moved that the Commission forward CU-12-554 to City Council recommending approval of the nine antennas as presented subject to the following conditions:*

- 1. submit an as-built emissions certification after the facility is in operation;*
- 2. removal of the facilities should the use cease; and,*
- 3. submit a bond guaranteeing removal of facilities should the use cease*

*because, the use as proposed should not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.*

*The motion was seconded by Commissioner Beatley.*

*Motion passed 7-0.*

- B. **CU-12-577** Request of Tom Godwin on behalf of AT&T for a conditional use permit to upgrade existing telecommunications facilities with an additional microwave dish at 799 Fairmont Avenue (Map Number 153-01- -2) zoned Limited Industrial (M-1) District.

Mr. Grisdale reviewed the request to add a microwave antenna as part of an upgrade of existing telecommunications facilities at the tower located on the National Fruit property at 799 Fairmont Avenue.

**Chairman Shore opened the public hearing.**

Applicant Tom Godwin discussed microwave antennas and stated that we will be seeing more and more of them with 4G service because they are faster than coax.

**Chairman Shore closed the public hearing.**

*Vice-Chairman Wiley moved that the Commission forward CU-12-577 to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:*

- 1. Submit an as-built emissions certification after the facility is in operation;*
- 2. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use;*
- 3. Submit a bond guaranteeing removal of facilities should the use cease.*

*The motion was seconded by Commissioner McKannan.*

*Motion passed 7-0.*

- C. **CU-12-556** Request of Emad Khezam dba Alibaba Hookah Bar for a conditional use permit for nightclub use and to modify conditions of an existing conditional use permit for hookah establishment use at 932 Berryville Avenue (*Map Number 176-07-3*) zoned Highway Commercial (B-2) District.

Mr. Grisdale reviewed the request to establish a nightclub and modify an existing Hookah Establishment, as defined in the Zoning Ordinance, at the subject property, which is located at 932 Berryville Avenue. The Hookah Bar was initially granted a conditional use permit (CU-11-76) on May 10, 2011. The business owners subsequently submitted a nightclub application (CU-11-702) in December 2011 for expansion of their Hookah Establishment to include a nightclub, and amend their conditions from CU-11-76 to allow for alcohol consumption. The Planning Commission recommended denial of removing the restriction of on-premise sale and consumption of alcohol and recommended approval of nightclub use. City Council subsequently denied the request on February 14, 2012, by a vote of 5-4.

With the current proposal, Mr. Khezam appears to be submitting a request that is consistent with what the Planning Commission was comfortable with this past January: asking for the approval of a nightclub permit, but not asking for the revocation of the condition prohibiting alcohol sales. Additionally, Mr. Khezam is requesting a modification of the conditions in CU-11-76 to allow for expanded business hours. He states that “[t]o better serve our customers, we would like to change the closing time of our business from 12:00am to 2:00am.”

Mr. Grisdale stated that there have been no recent issues with police calls or concerns from the Commissioner of Revenue related to the business.

**Chairman Shore opened the public hearing.**

Applicant Emad Khezam of Manassas stated that the location had previously had a nightclub permit for a different business, and other businesses in the larger building have had nightclub permits. He stated that he understands that he had violations before, but now he has a better understanding of the requirements. He wants to offer a safe, fun place aimed at those 18-21 years old.

Nadine Assou of Martinsburg stated that she is a customer who has frequented the establishment for the last 6-7 months. She stated that it is really enjoyable and has patrons of a large age range. She stated that the atmosphere is hospitable and offers a good cultural experience. She stated that she has never seen any issues or problems. She stated that it is great that they do not serve alcohol. She stated that it would be best to keep business in Winchester, rather than patrons traveling to Leesburg or D.C.

Russell Kitzmiller of Jubal Early Drive stated that he goes to the establishment three times a week or more and that it feels like a second home. He stated that it is a good place to meet friends in a safe environment.

Jamie Strawderman of Stephenson stated that he often works until 1am and there is nowhere to go afterward. It would be nice if the establishment were able to stay open later so that there could be a safe place to stop by after work.

**Chairman Shore closed the public hearing.**

Chairman Shore stated that when the hookah bar first came up, he was a vocal opponent. In the end, City Council made a decision. He stated that while some mistakes were made at first, everything seems to be good now. He stated that he is in favor of this request.

Commissioner Correll stated that he echoes Chairman Shore's comments. He stated that it seems like a good opportunity for some place for young people to go. He stated that he sees no danger to the public.

Commissioner McKannan stated that the previous request was tainted by the inclusion of alcohol and some procedural violations, but now it has a clean bill of health.

*Commissioner Smith moved that the Commission forward CU-12-556 to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommendation is subject to:*

- 1. Review in six months and reapproval required every three years thereafter;*
- 2. Modification of the Hookah Establishment conditional use permit (CU-11-76) condition #5 to allow for hours of operation from 11:00am to 2:00am.*
- 3. Nightclub use to end no later than 11:59pm Sunday through Wednesday nights and no later than 2:00am Thursday night/Friday morning through Saturday night/Sunday morning;*
- 4. The applicant taking into consideration the concerns of all of the neighbors and addressing them as they come up;*
- 5. A maximum of four (4) criminal offense calls per month within or attributable to the establishment, after which private security may be required and the permit may be subject to revocation;*
- 6. All windows and exterior doors to remain closed during nightclub use and no aspects of nightclub use to occur outside the building;*
- 7. Strict obedience with all local and state laws, especially those pertaining to the noise ordinance outlined in City Code and the timely payment of all taxes;*
- 8. The applicant is responsible for cleaning up any trash outside the facility after closing; and,*
- 9. The CUP expires automatically if the nightclub use ceases for more than one year or if the use of the property changes.*

*The motion was seconded by Commissioner Correll.*

*Motion passed 7-0.*

## **APPROVAL OF MINUTES**

*Commissioner Beatley moved to approve the minutes of the November 20, 2012 regular meeting as presented. The motion was seconded by Vice-Chairman Wiley.*

*Motion passed 7-0.*

## **OLD BUSINESS**

- A. **RZ-12-405** AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY.

Mr. Youmans reported that the applicant has requested further tabling of the item. The Traffic Impact Analysis is now complete and has been submitted. There is also a new proposed layout. The applicant would like to have additional time for staff to review and to have a neighborhood meeting.

*Commissioner Slaughter moved to table **RZ-12-405** until the January meeting at the applicant's request.*

*The motion was seconded by Commissioner Smith.*

*Motion passed 6-0-1 (Vice-Chairman Wiley abstained).*

## **NEW BUSINESS**

Mr. Youmans reported that Vice-Chairman Wiley, Commissioner Slaughter, and Commissioner Smith are signed up for the certified Planning Commissioner training next month.

Chairman Shore gave a brief speech thanking the Commissioners for their service and complimenting staff on its dedication over the past eight years of his service on the Commission.

## **ADJOURN**

With no further business to discuss, the meeting was adjourned at 3:30 pm. A reception for Chairman Shore followed.

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William Wiley, Vice-Chairman